

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Coleson Smith	Team: Squad #01	CCRB Case #: 202203095	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/11/2022 11:00 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 11/11/2023	Precinct: 07		
Date/Time CV Reported Wed, 05/11/2022 2:28 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/16/2022 10:56 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Joshua Acosta	03792	955705	007 PCT
2. PO Francisco Cardona	02358	936304	007 PCT
3. SGT Shana Mclean	01842	950869	007 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Jay Cuzcoasmal	17532	971393	007 PCT
2. PO Darvin Tapiarodriguez	26067	972479	007 PCT
3. PO Emmanuel Appiah	02192	972512	007 PCT
4. PO William Pak	03244	953212	007 PCT
5. PO Alfredo Salazar	02232	954310	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Shana Mclean	Abuse: Sergeant Shana McLean forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
B.PO Francisco Cardona	Force: Police Officer Francisco Cardona used physical force against § 87(2)(b)	§ 87(2)(b)
C.PO Joshua Acosta	Force: Police Officer Joshua Acosta used physical force against § 87(2)(b)	§ 87(2)(b)
D.PO Francisco Cardona	Force: Police Officer Francisco Cardona used physical force against § 87(2)(b)	§ 87(2)(b)
E.PO Francisco Cardona	Abuse: Police Officer Francisco Cardona refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 11, 2022, § 87(2)(b) called IAB and filed this complaint on behalf of her 18-year-old son, § 87(2)(b). On May 16, 2022, the case was received at the CCRB.

On May 11, 2022, at approximately 11:00 A.M., inside of § 87(2)(b) in Manhattan, Sergeant Shana McLean forcibly removed § 87(2)(b) to § 87(2)(b) Medical Center (**Allegation A: Abuse of Authority:** § 87(2)(g) Police Officers Francisco Cardona and Joshua Acosta pulled § 87(2)(b) onto a bed (**Allegations B and C: Force:** § 87(2)(g) § 87(2)(g) PO Cardona punched § 87(2)(b) in the right eye (**Allegation D: Force:** § 87(2)(g) and refused to provide his shield number to § 87(2)(b) (**Allegation E: Abuse of Authority:** § 87(2)(g)

Body worn camera video was obtained from Sgt. McLean, PO Cardona, and Police Officers Darwin Tapia Rodriguez, Jay Cuzco Asmal, Joshua Acosta, Emmanuel Appiah, William Pak, and Alfredo Salazar, all of the 7th Precinct (**01-08 Board Review**).

No summonses or arrests resulted from the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Shana McLean forcibly removed § 87(2)(b) to the hospital.

It is undisputed that on May 11, 2022, at approximately 11 A.M., Sgt. McLean, PO Cardona, PO Acosta, PO Tapia Rodriguez, PO Cuzco Asmal, PO Appiah, PO Pak, and PO Salazar responded to § 87(2)(b) in response to a 911 call made by § 87(2)(b) who reported her son, § 87(2)(b) had locked her out of their shared apartment during a dispute. Upon arrival, the officers spoke to § 87(2)(b) through the locked door, at which point § 87(2)(b) opened the door, and the officers entered. The officers informed § 87(2)(b) that he needed to go to the hospital, but § 87(2)(b) refused. Sgt. McLean then ordered officers to handcuff and remove § 87(2)(b) to the hospital.

§ 87(2)(b) did not provide any details about the dispute with his mother but acknowledged opening the door for the officers when they arrived (**09 Board Review**). The officers followed § 87(2)(b) into his bedroom and told him that he had to go to the hospital. § 87(2)(b) did not recall why the officers wanted him to go to the hospital. § 87(2)(b) was eventually handcuffed, removed from the apartment, placed in an ambulance, and transported to § 87(2)(b) Hospital. § 87(2)(b) failed to sign medical release forms and the investigation was thus unable to obtain his medical records.

§ 87(2)(b) testimony was largely consistent with § 87(2)(b) (**10 Board Review**). She stated that the dispute with § 87(2)(b) was about her intention to escort § 87(2)(b) to his doctor's appointment, and that § 87(2)(b) became upset and began throwing items inside the apartment when § 87(2)(b) insisted on accompanying him to the appointment.

According to NYPD EVENT #§ 87(2)(b) § 87(2)(b) called 911 and reported that § 87(2)(b) has a "mental history, is violent, had hit her with a bottle, locked her out of her home, and had threatened to set apartment on fire" (**11 Board Review**). The EVENT type was marked as a "violent EDP. Ambulance case," and thus resulted in both police officers and Emergency Medical Services (EMS) being dispatched to the location.

At 01:09 in PO Acosta's BWC footage, PO Acosta and Sgt. McLean meet § 87(2)(b) in front of her

building (01 Board Review). She tells them her son, § 87(2)(b) locked her out of their apartment and that he “destroyed the whole apartment.” At 03:07, in the elevator to the apartment, PO Acosta asks § 87(2)(b) if she said that § 87(2)(b) might light the apartment on fire. No response is captured. At 03:52, PO Acosta arrives outside the door of the apartment with Sgt. McLean and several other officers. § 87(2)(b) attempts to open the door with her keys but is unsuccessful. At 04:37, PO Acosta knocks on the front door and asks § 87(2)(b) to open the door. § 87(2)(b) says something inaudible from inside. § 87(2)(b) then tells the officers that he wants his social security card and his ID and that he will leave once he gets them. At 09:01, the officers enter the apartment after it is unlocked from the inside. EMS is on scene at the time they enter. Aside from an overturned folding chair in the living room, there are no other overt signs of disarray. The officers enter and walk down a hallway to the left of the entrance, where they encounter § 87(2)(b) holding a black plastic bag in the hallway. § 87(2)(b) then turns and walks into his bedroom, which is somewhat messy with clothes and other household items scattered on the floor and bed. At 09:36, Sgt. McLean and PO Acosta enter § 87(2)(b) bedroom. Sgt. McLean tells § 87(2)(b) that he has to go to the hospital because he threatened to burn the house down. § 87(2)(b) denies making such threats and says the dispute with his mother was about him wanting to go to his doctor’s appointment alone. At 10:26, § 87(2)(b) puts a pair of shoes into the black plastic bag. Sgt. McLean asks § 87(2)(b) to put his sneakers on so that the officers can take him to the hospital. § 87(2)(b) says the last time he went to the hospital, he was kept there for a month, so he was not going to go. After § 87(2)(b) refuses and walks away from Sgt. McLean, she orders the officers to handcuff § 87(2)(b). At 12:00, § 87(2)(b) is handcuffed, and escorted to an ambulance.

Sgt. McLean and PO Cardona’s testimonies were consistent with each other and their BWCs. Sgt. McLean (15 Board Review) said she ordered § 87(2)(b) removal to the hospital because § 87(2)(b) told the officers that § 87(2)(b) had threatened to burn down the apartment. The information § 87(2)(b) provided to the officers coupled with the officers’ own observations of § 87(2)(b) which included the fact that § 87(2)(b) had locked himself inside the apartment, and appeared very upset and agitated with his mother, all led Sgt. McLean to conclude that § 87(2)(b) was an emotionally disturbed person who posed a threat to himself and his mother. Sgt. McLean acknowledged that § 87(2)(b) information to the officers that he spent a month at the hospital the last time he was taken to the hospital factored into her decision to have § 87(2)(b) removed to the hospital since it confirmed that § 87(2)(b) had “an EDP history,” but said that the sole reason for ordering § 87(2)(b) removal was borne out of her concern for the safety and wellbeing of § 87(2)(b) and his mother, and that she wanted a medical professional to evaluate § 87(2)(b) and determine whether he was fit to return home.

The AIDED report prepared for § 87(2)(b) is consistent with that of the EVENT, and notes that § 87(2)(b) was removed to the hospital for “further evaluation” based on his mother’s complaint that he had threatened to burn down their apartment (25 Board Review).

NYPD Patrol Guide Procedure 221-13 states that a person is Emotionally Disturbed (EDP) if they meet two conditions: the person “appears to be mentally ill or temporarily deranged” and the person “is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others.” (17 Board Review). Officers must take such EDPs into protective custody and have them removed to the hospital by ambulance.

The BWC and the EVENT both establish that officers and EMS personnel were dispatched to the incident location regarding § 87(2)(b) 911 call that § 87(2)(b) who had a history of mental illness, was acting violently and had threatened to burn down § 87(2)(b) apartment. § 87(2)(b) also met the officers at the scene, and escorted them to her apartment, where § 87(2)(b) had locked himself inside. § 87(2)(g)

§ 87(2)(g)

Allegation (B) Force: Police Officer Francisco Cardona used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Joshua Acosta used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Francisco Cardona used physical force against § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Francisco Cardona refused to provide his shield number to § 87(2)(b)

It is undisputed that officers used force against § 87(2)(b) while attempting to handcuff and remove him to the hospital. It is however disputed whether PO Cardona punched § 87(2)(b) in the eye, and whether § 87(2)(b) requested PO Cardona's shield number.

§ 87(2)(b) said that PO Acosta and PO Cardona, identified via investigation, grabbed his arms, and attempted to place him in handcuffs soon after he told the officers that he was not going to the hospital. § 87(2)(b) who is 5'8" tall and weighs approximately 137 pounds, pulled his hands away from the two officers, tensed his body, and did not "let the [officers] get a proper hold of [him]" (09 Board Review). The officers pulled § 87(2)(b) onto his bed, at which point PO Cardona punched § 87(2)(b) once in the right eye with a closed fist. § 87(2)(b) requested PO Cardona's badge number after he was handcuffed, but PO Cardona ignored § 87(2)(b).

§ 87(2)(b) was not in § 87(2)(b) bedroom and did not observe anything that transpired between § 87(2)(b) and the officers (10 Board Review). When § 87(2)(b) returned home from the hospital, § 87(2)(b) saw that § 87(2)(b) eye was black and blue. § 87(2)(b) told her that an officer punched him in the eye. § 87(2)(b) provided a photograph of § 87(2)(b) which depicted slight bruising under § 87(2)(b) right eye, which she took on the date of the incident (14 Board Review).

PO Acosta's, PO Cuzco Asmal's, and PO Salazar's BWC videos were consistent with one another. At 10:54 in PO Acosta's BWC footage (01 Board Review), Sgt. McLean orders the officers to handcuff § 87(2)(b). PO Acosta, wearing royal blue surgical gloves and a gold bracelet on his right wrist, approaches § 87(2)(b) at which point § 87(2)(b) lifts his left arm over his head. PO Acosta reaches up and grabs § 87(2)(b) left arm, while PO Cardona, who is bald and wearing two-toned black and grey rubberized gloves, grabs § 87(2)(b) shirt near his collar. PO Acosta and PO Cardona then pull § 87(2)(b) onto a bed where he lands on his back. § 87(2)(b) sits up and PO Cardona grabs § 87(2)(b) right arm and pulls § 87(2)(b) backward so that his back is resting on the bed. PO Cardona then places his torso on § 87(2)(b) upper body. The officers repeatedly tell § 87(2)(b) to relax and calm down. At 11:05, § 87(2)(b) says, "nah, I'm not going to go." At 11:08, while still on top of § 87(2)(b) PO Cardona strikes § 87(2)(b) in the right eye with a quick jab from his right fist (timestamp 11:47:51). Approximately five other officers, in addition to PO Acosta, are assisting PO Cardona with handcuffing § 87(2)(b) at the time. A screenshot from the 11:09 mark of PO Acosta's BWC footage captures PO Cardona's right fist making contact with § 87(2)(b) right eye (12 Board Review). § 87(2)(b) immediately reacts by moving his right arm to his face while saying, "Nigga punching me?" A male voice responds, "You're not listening." At 11:14, § 87(2)(b) repeats, "Nigga punched me in my eye." At 11:17, PO Acosta says, "it's over" and the officers appear to have control over § 87(2)(b) hands behind his back and then place them in handcuffs. The same portion of the incident is captured from a different angle in PO Cuzco

Asmal's video. At 10:54 in PO Cuzco Asmal's BWC footage, he is standing directly behind PO Cardona, who is attempting to handcuff § 87(2)(b) **(03 Board Review)**. At 10:55, PO Cardona's elbow moves backward rapidly, knocking PO Cuzco Asmal's BWC from its holder on his chest. In several of the last frames captured before the camera falls to the ground (timestamp 11:47:51), PO Cardona's right arm is bent at the elbow, and the fingers of his right hand are curled in a fist. At 12:00 in PO Cardona's BWC, § 87(2)(b) gets up from the bed while squinting his right eye and complaining that someone punched him in the eye **(02 Board Review)**. A screenshot from the 12:01 mark of PO Cardona's BWC footage shows § 87(2)(b) squinting his right eye **(13 Board Review)**. None of the BWCs, which depicted the entire incident, show § 87(2)(b) requesting the badge number of any officer.

A Threat Resistance Injury Report completed by Captain Owais Khanzada states the following types of force was used by members of service during the incident: "Wrestling/Grappling, Forcible Take down, Hand Strike" **(26 Board Review)**.

Sgt. McLean **(15 Board Review)** and PO Cardona **(16 Board Review)** acknowledged that § 87(2)(b) pulled away, tensed his body, and struggled with officers when they tried to place him in handcuffs, and that PO Cardona and PO Acosta performed a tactical takedown to bring § 87(2)(b) to the bed so the officers could secure and handcuff him. PO Cardona acknowledged falling on top of § 87(2)(b) during the takedown and said other officers in the bedroom appeared to assist him and PO Acosta in obtaining § 87(2)(b) hands, which the officers ultimately obtained after a brief struggle with § 87(2)(b) who continued to tense his body and refused to give the officers his hands. PO Cardona did not use any other form of force against § 87(2)(b) denied striking § 87(2)(b) in the face or eye with a closed fist, and said the force he used was reasonable and consistent with restraining § 87(2)(b) so he could be handcuffed. PO Cardona reviewed PO Acosta's BWC and acknowledged seeing his "right arm" moving towards the direction of § 87(2)(b) face but denied striking § 87(2)(b) in the face or eye. PO Cardona said the footage shows him attempting to grab § 87(2)(b) hands during the struggle, that he may have hit him in the head, but that any contact with § 87(2)(b) face was unintentional. He did not remember if he said, "You're not listening" in response to § 87(2)(b) saying. "Nigga punched me in my eye."

PO Cardona's pedigree information attached to his MOS photo lists that he is 6'1" tall and weighs 180 pounds **(24 Board Review)**.

NYPD Patrol Guide Procedure 221-01 states "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody **(18 Board Review)**. In all circumstances, any application or use of force must be reasonable under the circumstances." In determining whether the use of force is reasonable, members of the service should consider the following: a) The nature and severity of the crime/circumstances; b) Actions taken by the subject; c) Duration of the action; d) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; e) Whether the subject is actively resisting custody; f) Whether the subject is attempting to evade arrest by flight; g) Number of subjects in comparison to the number of MOS; h) Size, age, and condition of the subject in comparison to the MOS; i) Subject's violent history, if known; j) Presence of hostile crowd or agitators; k) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

In DCT case number 2017-17014, an officer was found guilty of excessive force for striking a civilian in the face after the civilian placed something in his pocket and refused to answer the officer's questions during a street stop prompted by a tip reporting a gun **(27 Board Review)**. The case decision cites the "gratuitous" nature of the punch that was used "without police necessity."

The BWC footage, § 87(2)(b) and officers' testimonies, all establish that § 87(2)(b) verbally declared that he would not cooperate and then physically resisted officers' attempts to place him in handcuffs § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The footage of PO Cardona striking § 87(2)(b) § 87(2)(b) reactions, such as the immediate lifting of his arm to his face, and his declaring that someone punched him in the eye, and the photographic evidence of the subsequent bruising support § 87(2)(b) statement that an officer punched in the eye. PO Cardona did not offer any explanation for the punch because he did not acknowledge it, though he stated that § 87(2)(b) was uncooperative with being handcuffed at that time. Rather, he stated that any contact between his hand and § 87(2)(b) eye that may have occurred was an unintentional result of his attempts to grab § 87(2)(b) hands. BWC however, captured PO Cardona pull his arm back and form a closed fist before and while striking § 87(2)(b) thus indicating the force was not an attempt to grab anything. The strike came ten seconds after PO Cardona and three other officers began physically engaging with § 87(2)(b) who is five inches shorter and forty pounds lighter than PO Cardona, and after § 87(2)(b) was pinned to a bed. While § 87(2)(b) resisted officers' attempts to handcuff him, BWC footage did not capture him flail, swing, or punch with his arms or hands. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Finally, BWC footage does not show § 87(2)(b) requesting the badge numbers of any of the officers, thus contradicting his account that he requested PO Cardona's badge number, and that PO Cardona ignored him. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**20 Board Review**).
- PO Cardona has been a member of service for 17 years and has been a subject in six CCRB complaints and 11 allegations, none of which were substantiated. § 87(2)(g)
- Sgt. McLean has been a member of service for 11 years and has been a subject in two CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)
- PO Acosta has been a member of service for nine years and has been a subject in three other CCRB complaints and eight allegations, of which four were substantiated:
 - 201906066 involved a substantiated allegation of a search of a premises. The Board recommended Command Discipline B and the NYPD imposed formalized training.
 - 201908809 involved substantiated allegations of an entry of a premises, a frisk, and a threat of force. The Board recommended Command Discipline B and the NYPD took no disciplinary action.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of July 19, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**21-22 Board Review**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 1

Investigator:	<u>Coleson Smith</u>	<u>Investigator Coleson Smith</u>	<u>03/16/2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Mgr. Joy Almeyda</u>	<u></u>	<u>3.17.23</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date